

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLAYTON HOFFMAN,

Plaintiff,

v.

CITY OF TACOMA, DEPARTMENT OF
TACOMA PUBLIC UTILITIES, TACOMA
RAIL, a municipal corporation,

Defendants and Third
Party Plaintiffs,

v.

PORT OF TACOMA, a municipal
corporation,

Third Party Defendant.

Case No. C06-5008 RBL

ORDER APPROVING
REASONABLENESS OF SETTLEMENT
BETWEEN PLAINTIFF HOFFMAN
AND THIRD PARTY DEFENDANT
PORT OF TACOMA

I. INTRODUCTION

THIS MATTER comes before the Court on Plaintiff Hoffman's Motion for Determination of Reasonableness of Settlement. Hoffman and Third Party Defendant Port of Tacoma ask this Court to find that the proposed settlement between Hoffman and Port of Tacoma is reasonable and dismiss Port of Tacoma with prejudice and without costs to any party. Further, Hoffman and Port of Tacoma ask this Court to dismiss with prejudice all third party cross-claims Defendant/Third Party Plaintiff Tacoma Rail has

1 against Port of Tacoma. In response, Tacoma Rail asks this Court to find that the settlement between
2 Hoffman and Port of Tacoma is unreasonable. The Court has reviewed the materials submitted in support
3 of, and in opposition to, the Motion for Determination of Reasonableness of Settlement. For the following
4 reasons, the Motion is GRANTED.

5 **II. FACTUAL AND PROCEDURAL BACKGROUND**

6 On October 13, 2004, Plaintiff Hoffman was working as a conductor's field man for Tacoma Rail
7 at Port of Tacoma's North Intermodal (NIM) yard. Hoffman's duties included getting trains ready, putting
8 them together, and protecting crossings or "breaks" in the track. To accomplish these duties, he used a
9 Tacoma Rail F-350 truck.

10 For Tacoma Rail employees and trains to enter Port of Tacoma's NIM yard, the Tacoma Rail
11 yardmaster contacts the Port of Tacoma Railcar Coordinator. The Coordinator communicates to Port of
12 Tacoma personnel via radio that the train is coming and which tracks it will be using. However, there is no
13 direct line of communication between those employees working for Tacoma Rail in the NIM yard and Port
14 of Tacoma straddle carrier drivers working the the NIM yard.

15 During the evening of October 13, 2004,¹ Hoffman was assigned to build a train. Hoffman was
16 accustomed to looking for straddle carrier drivers while he built trains, as strad drivers have a history of
17 "darting" in between the tracks. After Hoffman finished assembling the train, Hoffman gave the engineer
18 approval to pull the train, and Hoffman began turning to travel in the opposite direction to check on certain
19 cars. As he made the U-turn in the F-350 truck, he was struck by a strad operated by a Port of Tacoma
20 employee. Hoffman was injured as a result of the collision and subsequently filed a complaint against
21 Tacoma Rail, the City of Tacoma, and the Department of Tacoma Public Utilities (collectively referred to
22 herein as "Tacoma Rail") in Pierce County Superior Court. Hoffman alleged that Tacoma Rail violated the
23 Federal Employers' Liability Act (FELA). Hoffman did not bring a cause of action against Port of Tacoma.

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28 ¹Plaintiff Hoffman claims the accident occurred on October 13, 2004, whereas Defendant Tacoma Rail
claims the accident occurred October 14, 2004.

Tacoma Rail removed the case to U.S. District Court for the Western District of Washington.² Tacoma Rail then filed a third party complaint against Port of Tacoma for negligence in relation to Hoffman's collision. Tacoma Rail asserted that it was entitled to indemnification and contribution from Port of Tacoma due to Port of Tacoma's negligence that led to Hoffman's accident and that Port of Tacoma's negligence caused damage to Tacoma Rail's property.

Although Hoffman has not brought a cause of action against Port of Tacoma, Port of Tacoma has offered Hoffman \$20,000.00 in exchange for a release, which Hoffman accepted. Hoffman has stated he will voluntarily dismiss his current FELA action against Tacoma Rail and re-file it in superior court under the provisions of the Superior Court Mandatory Arbitration.

III. ANALYSIS

To determine whether the proposed settlement is reasonable under RCW 4.22.060, the Court must evaluate the following:

- (1) the releasing person's damages;
- (2) the merits of the releasing person's liability theory;
- (3) the merits of the released person's defense theory;
- (4) the released person's relative faults;
- (5) the risks and expenses of continued litigation;
- (6) the released person's ability to pay;
- (7) any evidence of bad faith, collusion, or fraud;
- (8) the extent of the releasing person's investigation and preparation of the case; and
- (9) the interests of the parties not being released.

Glover v. Tacoma General Hosp., 98 Wash. 2d 708, 717-18, 658 P.2d 1230 (1983). No one factor is dispositive. *Id.* at 718. Applying the relevant factors to this case,³ the Court finds that the settlement is

² All parties now concede the case should not have been removed to federal court. Although this Court had original jurisdiction over the action, as Hoffman alleged violations of FELA, a statute which explicitly provides jurisdiction for federal courts, Congress made this type of action non-removable. See 28 U.S.C. § 1445 (a), which states, "A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1-4 and 5-10 of the Act of April 22, 1908 (45 U.S.C. 51-54, 55-60) may not be removed to any district court of the United States."

³ Not all of the enumerated factors are applicable to the present case. Because Hoffman has not asserted a cause of action against the Port of Tacoma, Factors 2 and 3, which address the releasing person's liability theory and the released person's defense theory, are inapplicable; Hoffman does not have a liability theory against Port of Tacoma, and Port of Tacoma does not have a defense theory against Hoffman. Similarly, Factor 6, which addresses the released person's ability to pay, is inapplicable, as there are no allegations regarding Port of Tacoma's ability or inability to pay either the proposed settlement or more than the proposed settlement. Factor 8, which addresses the extent of the releasing person's investigation and preparation of the case, is similarly inapplicable. Hoffman does not address this factor in his motion, and Tacoma Rail concedes that Hoffman and Port of Tacoma have adequately investigated and prepared for the case.

1 reasonable.

2 Factor 1: The releasing person's damages. Hoffman's medical bills total \$13,098.00. Additional
3 damages include lost wages of \$7800.00 and \$4619.00 for "arbitraries," the differential between the
4 regular and foreman's rate of pay, and a bonus. Hoffman also claims damages for loss of sick leave, no
5 accrual of sick and vacation pay from October 15, 2004, through January 23, 2005, loss of three personal
6 paid days leave, and loss of Railroad Retirement Board credits, although he does not specify a monetary
7 value of these losses. Thus, the total of Hoffman's special damages is in excess of \$25,517.00. Given that
8 Port of Tacoma has offered to pay Hoffman \$20,000.00, or nearly 80% of Hoffman's special damages, this
9 factor supports the Court's finding that the settlement is reasonable.

10 Factor 4: The released person's relative faults. It is unclear to what degree Port of Tacoma's
11 alleged negligence contributed to Hoffman's injury. Hoffman focuses on the fact that his employer,
12 Tacoma Rail, had a non-delegable duty to provide him with a safe work environment. However, this does
13 not address the question of whether or how the Port of Tacoma's actions (or lack thereof) led to
14 Hoffman's injury. Tacoma Rail argues that the opinion of Plaintiff's liability expert, Paul F. Byrnes, proves
15 that Port of Tacoma was actually responsible for the accident. Byrnes stated in his opinion that the straddler
16 should not have been operating in the area where the collision occurred, as there is a high potential for
17 collisions when straddlers and other equipment are operating on tracks adjacent to tracks where trains are
18 operating. However, Byrnes also stated that Tacoma Rail, the entity providing rail service at NIM yard,
19 should "demand that the rule prohibiting movement of straddlers on or near tracks where Tacoma Rail is
20 working and tracks adjacent thereto is enforced" by Port of Tacoma.

21 Given that Port of Tacoma likely bears some, but not all, of the responsibility for the collision, the
22 settlement between Hoffman and Port of Tacoma for \$20,000.00, or nearly 80% of Hoffman's enumerated
23 special damages, is reasonable.

24 Factor 5: The risks and expenses of continued litigation. Because Hoffman has not brought a cause
25 of action against Port of Tacoma, there will be no direct reduction in the amount of litigation if the Court
26 finds that the settlement is reasonable. Hoffman retains his claim against Tacoma Rail under FELA, and
27 Tacoma Rail retains its claim against Port of Tacoma for negligence. Although Hoffman, Tacoma Rail, and
28 Port of Tacoma have agreed to arbitrate the remaining issues, any of these parties who may be unsatisfied

1 with the arbitrator's award can seek review of that decision in a court of law.

2 However, by agreeing to settle with the Port of Tacoma, Hoffman will extinguish any right he may
3 otherwise have to bring a cause of action against the Port of Tacoma in relation to the accident that
4 occurred on October 13, 2004. Thus, this Court's acceptance of the settlement will preclude future
5 litigation between Hoffman and Port of Tacoma. This supports the Court's finding that the settlement is
6 reasonable.

7 Factor 7: Any evidence of bad faith, collusion, or fraud. There is no allegation that Hoffman and
8 Port of Tacoma are guilty of bad faith, collusion, or fraud in agreeing to the proposed settlement. This
9 supports the Court finding that the settlement is reasonable.


10 Factor 9: The interests of the parties not being released. Tacoma Rail has a right of contribution
11 against Port of Tacoma only if the Court finds that there is joint and several liability. *See* RCW 4.22.040
12 (1). If there is no joint and several liability in this case, Tacoma Rail, the non-released party, has no interest
13 in whether the Court finds that the settlement is reasonable; Tacoma Rail will be liable to Hoffman only for
14 the proportion of damages, if any, attributable to its actions. *See* RCW 4.22.070 (1). Thus, a finding that
15 the settlement between Hoffman and Port of Tacoma is reasonable does not affect the amount Tacoma Rail
16 will pay to Hoffman nor does it alter Tacoma Rail's inability to seek contribution from Port of Tacoma.

17 If there is joint and several liability, Tacoma Rail will lose its right to seek contribution against Port
18 of Tacoma if the Court finds that the settlement is reasonable. *See* RCW 4.22.060 (2). However, Hoffman
19 has agreed to offset any verdict against Tacoma Rail by \$20,000.00, the amount of the settlement with Port
20 of Tacoma. Since the parties have agreed to arbitrate this case, Hoffman's maximum recovery is
21 \$50,000.00. *See* RCW 7.06.020 (1). Thus, the maximum amount Tacoma Rail could be liable for is
22 \$30,000.00. Given that Hoffman's special damages are in excess of \$25,000.00, it is not unreasonable for
23 Tacoma Rail to *potentially* be liable for \$30,000.00.

24 The Court expresses no opinion as to whether there is joint and several liability in this case because
25 regardless of whether the Court finds that joint and several liability exists, the proposed settlement is
26 reasonable. Given the evidence presented by the parties along with their motions, the Court finds a hearing
27 on the reasonableness of the settlement is unnecessary. The Court GRANTS Plaintiff's Motion, finding that
28 the proposed settlement between Hoffman and Port of Tacoma is reasonable. Tacoma Rail's claim against

1 Port of Tacoma for indemnity or contribution is dismissed, but Tacoma Rail retains its claim against Port of
2 Tacoma for property damage.

3 DATED this 29th day of January, 2007.

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6 RONALD B. LEIGHTON
7 UNITED STATES DISTRICT JUDGE
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